

Appl. No.: 10/618,223
Amdt. dated 09/11/2007
Reply to Office action of 06/12/2007

Amendments to the Drawings:

A replacement sheet for page 5 of the drawings is attached and addresses the objection to FIG. 11 in the Office Action.

REMARKS/ARGUMENTS

This Amendment is submitted with a Request for Continued Examination. In the final Office Action, all of the pending claims are rejected. In particular, Claims 5, 12, and 41 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 1, 3-8, 10-24, 37 and 39-42 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,919,147 to Jain (“Jain”) in view of U.S. Patent No. 5,010,892 to Colvin et al. (“Colvin”) and further in view of U.S. Patent No. 6,712,771 to Haddock et al. (“Haddock”). The Examiner also raises objections to the drawings, specification, and claims.

As explained in further detail below, Applicant has amended independent Claims 1, 7, 24, and 27 to further distinguish the cited references. Claims 5, 12, 15, 19, and 41 have been amended for clarification, and Claims 44-57 have been added. In light of the amendments and subsequent remarks, Applicant respectfully requests reconsideration and allowance of the claims.

Objections to the Drawing, Specification, and Claims

The Examiner objects to the drawings because FIG. 11 is not numbered. Applicant has provided a replacement sheet for page 5 of the drawings. Applicant notes that the replacement sheet corresponds to the originally filed FIGS. 9-11 and does not introduce new matter.

In order to address the objection to the specification, Applicant has amended page 6, line 22 to recite inflated “configuration.”

Applicant has amended the preamble of Claims 1 and 37 to recite a device for measuring a target segment of a lumen of a patient so as to select a suitable interventional prosthesis. In addition, Claim 15 has been amended to recite “diameter” rather than length, and Claim 19 has been amended to recite “exterior” conduit rather than “first” conduit. Therefore, the drawing, specification, and claim objections have been overcome.

Rejection under §112, ¶1

The Examiner rejects Claims 5, 12, and 41 for allegedly failing to comply with the written description requirement because “the original disclosure does not appear to support inward facing surfaces of the legs in the embodiment of figures 14-18 being in flush contact with

one another from the distal ends of the legs to the proximal ends of the legs when the measurement assembly is closed within the exterior conduit.” Applicant respectfully disagrees, as page 10, lines 23-26 of the present application clearly states that “when the measurement assembly is retracted, the legs are relaxed and reside adjacent to one another so that the legs may be retracted within the exterior conduit” (emphasis added). Thus, the term “adjacent” was used to describe that the legs are flush to one another, and the only difference between the embodiment shown in FIGS. 1-13 and FIGS. 14-18 is that the distal ends of the legs are coupled together in FIGS. 14-18. The specification does not disclose that there are any other differences between the embodiments. In addition, FIG. 18 of the present application shows the legs displaced from the exterior conduit, wherein portions of the legs proximate to the proximal and distal ends are in flush contact, such that as the legs are retracted into the exterior conduit, the legs would lie flush to one another along their entire length. The specification does not teach or suggest otherwise. Therefore, Applicant respectfully submits that the rejection under §112, ¶1, is overcome.

Rejection under §103(a)

Regarding the rejection under §103(a), the Examiner now cites Haddock as disclosing legs that are in flush contact with one another between the proximal and distal ends of the legs when the legs are closed within the exterior conduit. Haddock discloses a temperature sensing catheter. FIGS. 3A-3C of Haddock illustrate an embodiment of a “second hand-type structure” that includes fingers (302) that are slidably disposed within an outer sheath (300). The fingers include sensors (304) that are configured to expand outwardly to contact the inner wall of the vessel as the fingers are pushed out of the outer sheath. The sensors may be used to provide localized temperature or an estimate of the inner diameter of the vessel.

In light of the new rejection, Applicant has amended independent Claims 1, 7, 24, and 37 to recite that the measurement markers formed on the exterior conduit are configured to provide information regarding length of a target segment and that the lumen facing surface of each of the legs includes a plurality of measurement markers that are configured to provide information regarding a diameter of the target segment. For example, FIG. 11 of the present application

illustrates that the legs include detents (360) that engage with a lip (170) extending from the exterior conduit.

In contrast, Jain only discloses graduated markings (42) on a distal end of a catheter (24) for determining the interior diameter of the vessel but does not disclose measurement markers formed on each of the filaments (44) or that the sheath (22) also includes measurement markers for determining a length of the vessel. Furthermore, Colvin discloses that a diameter and/or axial length of a body passageway may be determined by observing a pointer (22) that moves along a measurement scale (24) but does not teach or suggest that the probes (54A, 54B) include measurement markers at all. In addition, Haddock discloses that each finger (302 or 310) includes individual sensors (304 or 312) that may be used to measure the diameter of the vessel but does not disclose that each finger includes a plurality of sensors or that the outer sheath (300) includes measurement markers for determining the length of a vessel.

In view of the remarks and amendments presented above, it is respectfully submitted that Claims 1, 3-8, 10-24, 37, 39-42, and 44-57 of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

The patentability of the independent claims has been argued as set forth above and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to the dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of the dependent claims at a later date if necessary.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Trent A. Kirk', with a small number '7' written above the end of the signature.

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